



## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0148]

#### Commercial Driver's License: Application for Exemption; National School Transportation Association

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition; grant of application for exemption.

**SUMMARY:** FMCSA announces its decision to grant the exemption requested by the National School Transportation Association (NSTA) for commercial driver's license (CDL) applicants seeking a school bus endorsement, from the engine compartment portion of the pre-trip vehicle inspection skills testing requirement, known as the "under-the-hood" testing requirement. Drivers issued a CDL pursuant to the requested exemption would be restricted to the intrastate operation of school buses only. FMCSA also grants an exemption from the requirement that states administer this portion of the pre-trip vehicle inspection test in accordance with an FMCSA pre-approved examiner information manual. FMCSA analyzed the application and public comments and determined that granting the exemption is likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

**DATES:** The exemption is effective from *November 27, 2022 through November 27, 2024*.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-2722. E-mail: [richard.clemente@dot.gov](mailto:richard.clemente@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

#### **Viewing Comments and Documents**

To view comments, go to [www.regulations.gov](http://www.regulations.gov), insert the docket number “FMCSA-2022-0148” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “View Related Comments.”

To view documents mentioned in this notice as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov), insert the docket number “FMCSA-2022-0148” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

### **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation

(49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Background**

#### *Current Regulatory Requirements*

FMCSA's CDL regulations in 49 CFR part 383.113(a)(1)(i) require that applicants for a CDL possess basic pre-trip vehicle inspection skills for the vehicle class that the driver operates or expects to operate. For all test vehicles, applicants must be able to identify each safety-related part on the vehicle and explain what needs to be inspected to ensure a safe operating condition of each part, including the engine compartment.

FMCSA initially issued a three month "under-the-hood" waiver on January 3, 2022, in response to the unique circumstances resulting from the school bus driver shortage and which was exacerbated by the COVID-19 pandemic. FMCSA issued two subsequent waivers, on March 28, 2022, and June 30, 2022.

#### *Applicant's Request*

The NSTA applied for an exemption for CDL applicants from the engine compartment component of the pre-trip vehicle skills testing requirement, known as the "under-the-hood" testing component, in 49 CFR 383.113(a)(1)(i). The requested exemption would apply to CDL applicants seeking the school bus (S) and passenger (P) endorsements and the intrastate only (K) restriction. Drivers issued a CDL pursuant to the requested exemption would be restricted to the intrastate operation of school buses only. NSTA is a membership organization for school bus contract-operators engaged primarily in transporting students to and from school and school-related activities. NSTA

believes the “under-the-hood” testing requirement is a “barrier to entry for new school bus drivers, contributing to the nationwide driver shortage.” NSTA requested the exemption for a five-year period.

#### **IV. Method to Ensure an Equivalent or Greater Level of Safety**

The applicant believes that an exemption from the “under-the-hood” testing requirement will not have any effect on the safety level of school bus operations because school bus drivers must remain on the bus with students at all times. NSTA states that trained mechanics therefore complete roadside diagnostics and repairs of mechanical issues should a school bus break down. NSTA added in its comments to the docket that a driver is able to identify a fluid leak in a pre-trip inspection without opening the engine compartment and could then notify a maintenance technician. NSTA also noted in its comments to the docket that the safest mode of home-to-school transportation for students is the school bus.

#### **V. Public Comments**

On August 11, 2022, FMCSA published the application for exemption (87 FR 49646). The Agency received 57 comments. School bus companies and industry associations, NSTA, the Pennsylvania Department of Education, the Augusta School District, and 20 other individuals supported the exemption. NSTA commented that “according to the last waiver decision from FMCSA on June 30, 2022, it has been determined by FMCSA that by waiving the ‘under the hood’ portion of the CDL exam, the level of safety is equivalent to the level of safety without the waiver.” Commenters who supported the exemption noted that school bus drivers must remain with the children and, therefore, may never leave the bus and check the engine while en route. They noted that most school districts have mechanics, not drivers, perform engine compartment inspections. Commenters also stated that the exemption will attract new drivers, such as young mothers and grandparents, to their industry, and alleviate school bus driver

shortages and CDL testing delays. In addition, commenters said the industry is transitioning to electric buses and the “under-the-hood” component is an antiquated requirement, which adds on average an additional 3-4 days of training time. The Wisconsin School Bus Association and the Augusta School District stated they have found the waivers useful to recruit and retain school bus drivers.

Eight commenters opposed the exemption, including the National Association for Pupil Transportation (NAPT), the National Association of State Directors of Pupil Transportation Services (NASDPTS), the Minnesota Department of Public Safety (DPS), the Iowa Department of Transportation (DOT), Bloomington Public Schools, AWM Associates, Inc., and two individuals. The NAPT supported the issuance of temporary regulatory relief, but they now conclude “the prudent course is to err on the side of safety and security.” NAPT noted that an added consideration for safety is the transition of school bus fleets to electric propulsion and possible new safety issues to monitor, as well as potential security threats to school buses, for which engine compartment inspections are a common sense part of security due diligence. The NASDPTS commented that school bus drivers must be able to check under the hood of the vehicle to find issues before the bus goes out, such as worn or frayed belts or low fluid levels. NASDPTS added that many districts rely upon school bus drivers to perform the pre-trip inspections and in rural areas, many drivers take the buses home each night and must perform the inspections themselves. The NASDPTS further commented that there is a shortage of maintenance personnel facing the school bus industry.

The Minnesota DPS commented that the point of the pre-trip inspection is to identify critical safety issues prior to leaving, not to repair mechanical issues while en route, and the driver must make sure the vehicle is safe to operate prior to a trip. The Minnesota DPS questioned why the engine compartment component of the skills test would be critical for all CDL drivers except school bus drivers and stated that all CDL

holders should be held to the same standard. The Minnesota DPS also stated that it is burdensome and confusing to program software for a temporary change, as well as to train law enforcement to understand and recognize the restriction. Minnesota DPS also noted that many drivers in rural areas in the state take the bus home at night and must be able to ensure the vehicle is safe to operate prior to its daily operation.

The Iowa DOT stated that it was one of the few states to adopt the waiver and has found it overly burdensome and confusing to implement, which has created unanticipated delays. The Iowa DOT added that drivers who receive the restricted CDL must return to the state licensing agency to complete the engine compartment component of the test if they wish to operate any other CMV, which may exacerbate driver shortage issues in other industries and increase CDL skills test wait times. Bloomington Public Schools stated that its mechanics are too busy to check fluids on a daily basis and noted that lowering the standards to obtain a CDL will lower the standard of drivers on the road.

## **VI. FMCSA Safety Analysis and Decision**

FMCSA has evaluated NSTA's application and the public comments and grants the exemption request for a two-year period, rather the five-year period requested by NSTA. The two-year period will allow states time to implement the American Association of Motor Vehicle Administration (AAMVA) recommendations for modernizing the CDL skills testing procedures, which may eliminate the need for the exemption by providing an option for a less burdensome engine compartment component of the test.

Due to the limited scope of the "under-the-hood" waiver, the existing regulatory requirements that remain in place, and the terms, conditions, and restrictions of the waivers, FMCSA determined that previous "under-the-hood" waivers were likely to achieve a level of safety that is equivalent to the level of safety that would be obtained absent the waiver. The exemption would similarly achieve an equivalent level of safety.

The exemption does not apply to the remaining elements of the pre-trip vehicle inspection components of the skills test, as set forth in 49 CFR 383.113(a)(1)(ii-ix). Accordingly, drivers obtaining CDLs under this exemption will have demonstrated their ability to safely operate the special features of a school bus. In response to NASDPTS's concern about the physical abilities of school bus drivers, the exemption does not change the physical qualification requirements for drivers in 49 CFR part 391, subpart E.

Further, because school buses are typically operated for relatively short distances, mechanics or other qualified personnel can readily provide roadside assistance in the event of an engine malfunction. The exemption does not change FMCSA's vehicle maintenance requirements in 49 CFR part 396, including that every motor carrier must systematically inspect, repair, and maintain all vehicles (§ 396.3) and that unsafe operations of a motor vehicle are forbidden (§ 396.7). Any state or local school bus inspection maintenance standards would continue to apply under this exemption. In response to concerns from the Minnesota DPS and Iowa DOT, FMCSA notes that use of the exemption is optional for states. A state may elect to continue to require all CDL applicants to meet the requirements of 49 CFR 383.113(a)(1)(i).

As a part of the exemption, the State Driver Licensing Agency (SDLA) must, upon request by FMCSA, provide the Agency with the names and CDL numbers of the drivers who were issued a CDL pursuant to the terms of the exemption.

For the above reasons, NSTA's exemption application is granted.

## **VII. Terms and Conditions of the Exemption**

This exemption covers states for the period beginning at 12:00 a.m. (ET) on *November 27, 2022 and continuing through 11:59 p.m. on November 27, 2022*. Under this exemption, a state may, but is not required to, waive the engine compartment portion of the pre-trip vehicle inspection skills test, set forth in 49 CFR 383.113(a)(1)(i), only for CDL applicants seeking the S and P endorsements, subject to the (K) restriction limiting

their operation to intrastate commerce. States issuing CDLs pursuant to this exemption are not subject to the requirement in 49 CFR 383.133(c)(1) that this portion of the pre-trip vehicle inspection test be administered in accordance with an FMCSA pre-approved examiner information manual.

FMCSA intends to continue to closely monitor the safety impacts of the relief granted under this exemption. As necessary, FMCSA may take action to modify the exemption, including scaling back the regulatory relief provided, or to terminate the exemption sooner, if conditions warrant.

States issuing CDLs pursuant to this exemption must abide by the following terms and conditions:

1. The CDL credential must conform to the requirements of Part 383, subpart J.
2. When issuing a K-restricted CDL with the S and P endorsements pursuant to this exemption, states must continue to comply with the applicable provisions set forth in 49 CFR 383.73.
3. When issuing a K-restricted CDL with the S and P endorsements pursuant to this exemption, states must place a school bus only restriction on the CDL in accordance with 49 CFR 383.153(a)(10)(ix).
4. States must conduct the remaining pre-trip vehicle inspection components of the skills test for drivers subject to this exemption, as set forth in 49 CFR 383.113(a)(1)(ii-ix).
5. Upon request from FMCSA, the SDLA must provide the names and CDL numbers of drivers who issued a CDL pursuant to the terms of this exemption, as authorized by 49 CFR 383.73(h) and 384.225(e)(2).



6. This exemption applies only to the intrastate operation of school buses used to transport students from home to school, from school to home, or to and from school-sponsored events, as defined in 49 CFR 383.5.<sup>1</sup>
7. FMCSA reserves the right to revoke this exemption for drivers' involvement in accidents, the failure of states or drivers to comply with the terms of this exemption, or as circumstances otherwise warrant.

**Robin Hutcheson,**  
*Administrator.*

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<sup>1</sup> 49 CFR 383.5 defines "school bus" as "a CMV used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include operations of a for-hire motor carrier."